THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 17029 of 2006

Dated: 23-08-2006

Between:

G.V.N. Seshu.

..... PETITIONER

AND

Andhra Pradesh State Road Transport Corporation,
rep. by its Managing Director, Hyderabad, and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 17029 of 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the second respondents-Regional Manager, A.P.S.R.T.C. (for short Corporation) in terminating the contract granted in favour of the petitioner is arbitrary and illegal.

The facts which are not in dispute are as under:

The petitioner was granted a contract for providing value added facilities in Volvo A/c and Hi-tech buses of Visakhapatnam depot under an agreement dated 03-08-2004. The period of contract is five years with effect from 12-08-2004 to 11-04-2009. Under the agreement, the petitioner is required to provide value added facilities in two Volvo A/c buses and 8 Hi-tech buses. However, it appears that during the month of February, 2006, the Corporation has entrusted some more Volvo buses to the petitioner for maintenance on nomination basis. While the matter stood thus, the petitioner was served with a show cause notice dated
18-06-2006 alleging that during the course of inspection it was found on 19-05-2006 that the petitioner had supplied woolen blankets to the passengers, which were cut in 2/4 pieces. It was also alleged that no magazines were found with the passengers and that the same would amount to breach of terms and conditions of the agreement. Accordingly, the petitioner was called upon to explain as to why the contract awarded to him should not be terminated. The petitioner

submitted an explanation dated
28-06-2006 denying the allegations and stating that the blankets were cut into 4 pieces by the staff of the Corporation themselves. It is further explained that the bus that was inspected on
19-05-2006 was entrusted to him on nomination basis and that it was not covered by the agreement dated
03-08-2004. Having received the said explanation, the second respondent-Corporation passed the impugned order dated
02-08-2006 terminating the contract holding that the explanation submitted by the petitioner was not satisfactory. Questioning the same, this writ petition is filed.

I have heard the learned counsel for the petitioner as well as the learned standing counsel appearing for the Corporation.

The learned counsel for the petitioner contended that since the fact that the bus that was inspected on
19-05-2006 was not covered by the agreement dated 03-08-2004 is not in dispute, the alleged violation of terms and conditions, if any, cannot be made basis for the impugned termination.

On the other hand, learned counsel appearing for the Corporation contended that since under the agreement, the Corporation was granted liberty to increase the number of buses, the petitioner is bound to provide facilities in the additional buses also in accordance with the same terms and conditions. The learned counsel also contended that as the dispute raised by the petitioner arises out of a non-statutory contract voluntarily entered into between the parties, the writ petition cannot be maintained under Article 226 of the Constitution of India.

From the counter affidavit, it is clear that the respondent-Corporation is not disputing the fact that some additional vehicles were entrusted to the petitioner in the month of February, 2006 apart from buses which were entrusted under the agreement dated

03-08-2004. However admittedly no work order was issued by the Corporation in respect of the additional buses entrusted in the month of February, 2006 and no terms and conditions were prescribed. Nothing has been placed before this Court by the Corporation to show that the entrustment of the additional buses was in terms of the agreement dated 03-08-2004. On the other hand it was admitted in the counter that the additional buses were entrusted on nomination basis. Hence the contention of the Corporation that the terms and conditions prescribed under the agreement dated 03-08-2004 are applicable to the additional buses entrusted to the petitioner in the month of February, 2006 is untenable and cannot be accepted.

Admittedly the inspection was conducted on 19-05-2006 in one of the buses entrusted to the petitioner in the month of February, 2006. Hence the respondent-Corporation is not justified in terminating the contract on the basis of the alleged violations in respect of the maintenance of the bus, which is not covered by the agreement dated 03-08-2004. So far as the other allegations, in the show cause notice itself it was mentioned that penalties were imposed as per the terms and conditions of the agreement and the petitioner has already complied with the same.

Since on the face of record, the action of the respondent-Corporation is arbitrary and illegal, I do not find any substance in the contention raised by the learned standing counsel for the Corporation that the dispute arising out of a contract is not amenable to writ jurisdiction.

Accordingly, the writ petition is allowed and the impugned order dated 02-08-200 is set aside. No costs.

G. ROHINI, J

Dated:23-08-2006

KLP